

Copy to opinion

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March 8

SEP 25 1956
CONCORD NH

Mrs. Edna Annis Elwell
Secretary
Teachers' Retirement System
State House Annex
Concord, New Hampshire

Dear Mrs. Elwell:

This is in response to your request of February 20th, for our opinion as to whether the Board of Trustees is authorized to process and pay a retirement benefit to members of the system who have reached compulsory retirement age where the members have not submitted a written application to the Board of Trustees. It is our understanding that your question does not relate to situations where an extension has been granted by the State Board of Education. RSA 192:5 provides as follows:

"Service Retirement Benefits. I. Any member in service may retire on a service retirement allowance upon written application to the board of trustees setting forth at what time not less than thirty days nor more than ninety days subsequent to the filing thereof, he desires to be retired, provided the member at the time so specified for his retirement has attained age sixty and notwithstanding that during such period of notification he may have separated from service. Commencing July 1, 1951 the compulsory retirement age shall be age seventy, reduced by one year of age for each one-year period thereafter, until the compulsory retirement age becomes age sixty-five. At the end of a school year all members who have then attained the compulsory retirement age shall be retired forthwith; provided that upon the recommendation of the superintendent of schools the member may be granted an extension in service year by year by the state board of education, but in no case beyond the end of the school year during which he attains age seventy.

II. Upon service retirement the member shall receive a service retirement allowance which shall consist of:

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(a) A teacher annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) A state annuity which, together with his teacher annuity, shall be equal to one-seventieth his average final compensation multiplied by the number of years of his creditable service not exceeding thirty-five years."

The only reference to a written application appears in the first sentence of this section. This sentence refers solely to members who voluntarily retire before reaching the compulsory retirement age. This section provides that "at the end of a school year all members who have then attained the compulsory retirement age shall be retired forthwith; . . ." Paragraph XI of section 1, chapter 192, RSA defines retirement as follows:

"Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions hereof."

In our opinion in view of this definition of retirement, the Board of Trustees is authorized to process and pay a retirement benefit to members reaching the compulsory retirement age even if they do not submit an application therefore.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/T